

FY 2006 APPROPRIATION TRANSFER – DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND OTHER ISSUES

A Report Prepared for the
Legislative Finance Committee

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BACKGROUND

The Legislative Finance Committee (LFC) considered and reported on an amended appropriation transfer request for the Department of Public Health and Human Services (DPHHS) at its June meeting. The amount of the request was \$9 million, which included a \$3 million contingency for potential federal reimbursement changes due to the federal Deficit Reduction Act of 2005 (DRA).

The LFC also heard a staff report about the potential to use excess state special revenue authority – specifically tobacco tax revenue from the health and Medicaid initiatives and tobacco settlement revenues – to offset general fund costs and reduce the appropriation transfer. The report included a staff legal opinion that concluded:

- 1) By law, an agency must use non general fund revenue to offset general fund when ever possible;
- 2) Funds from the health and Medicaid initiatives account were subject to the same provision and should be used to offset general fund costs that could be paid from the account
- 3) There were no controls in statute that would prohibit the health and Medicaid initiatives account from being drained of its cash balances¹

The LFC reported that the DPHHS appropriation transfer request met statutory criteria. The committee also asked that:

- DPHHS use state special revenue authority as required by law to offset general fund costs
- DPHHS report to the LFC by July 15 on the appropriation transfer amount
- Staff prepare options to amend statute and prevent the health and Medicaid initiatives account from being depleted beyond legislative expectations

This memorandum responds to each of those requests. In addition, the report:

- Raises an issue for LFC consideration - DPHHS could increase general fund reversions by \$1 million in FY 2006 by using a biennial appropriation for Big Sky Rx start up costs to reimburse general fund costs for Medicaid provider rate increases
- Provides information on the potential FY 2007 cost overrun as well as the DPHHS plan to potentially use biennial general fund appropriations to help reduce the FY 2007 cost overrun

FINAL TRANSFER AMOUNT

On July 15, the Legislative Fiscal Analyst received a memorandum notifying the LFC that DPHHS intended to transfer no more than \$5.0 million general fund from FY 2007 to FY 2006 compared to the \$9.0 million amount reviewed by the LFC earlier in the month. The memo also noted that the amount actually transferred could be different. The final amount transferred was \$2.8 million general fund for cost overruns at two state institutions: \$2.1 million for the Montana State Hospital and \$0.7 million at the Montana Developmental Center.

DPHHS lowered the amount of the general fund transfer from \$9 million to \$2.8 million by:

- Removing \$3.0 million since federal guidance on potential changes in federal reimbursement for Medicaid targeted case management had not been provided
- Transferring \$1.8 million in general fund costs to state special revenue appropriations from the health and Medicaid initiatives account
- Refining Medicaid service and caseload estimates and lowering the projected estimate by \$1.1 million general fund²

¹ This issue is related to the 2005 legislative goal to create a cash balance to provide sustainability for the new programs funded from the health and Medicaid initiatives account. The 2005 Legislature took several actions to defer large expenditures from the health and Medicaid initiatives account until December 1, 2005 or until the account accumulated a \$25 million balance, whichever occurred first. The 2005 Legislature restricted many appropriations from the account for new programs, including funding for Big Sky Rx and small business employee insurance initiatives, with these two conditions. It also added general fund to pay a portion of Medicaid provider rate increases that were initially fully funded from the account in order to help the account build a reserve.

STAFF REVIEW AND COMMENT

After FY 2006 year end closing, LFD staff reviewed reverted appropriation amounts. Based on that review, it appears DPHHS could have reduced the appropriation transfer by at least \$1.0 million. Also, had the agency had additional time at fiscal year end to manage excess general fund appropriation authority, it could have reduced the transfer amount by another \$1.0 million.

INCREASE GENERAL FUND REVERSIONS - \$1 MILLION

Even though the FY 2006 books are closed, DPHHS can manage reverted appropriation balances to achieve an additional \$1.0 million general fund reversion and could ensure its compliance with the statutory requirement to spend non general fund first. DPHHS can use a \$1.0 million unrestricted, biennial appropriation from the health and Medicaid initiatives account to offset an equal amount of general fund supporting Medicaid provider rate increases, an allowable use of the account.

The 2005 Legislature made three appropriations from the health and Medicaid initiatives account to fund implementation of Big Sky Rx:

- A \$1.0 million unrestricted biennial appropriation to pay start up costs
- Two annual restricted appropriations to pay “implementation costs for SB 324” that authorized Big Sky Rx - \$6.0 million in FY 2006 and \$8.5 million in FY 2007

The \$1.0 million biennial start up appropriation was about a quarter expended at fiscal year end. Costs paid from the biennial appropriation in FY 2006 could be shifted and paid from the FY 2006 restricted appropriation to free up the entire \$1.0 million biennial balance. Language establishing the restriction for the annual appropriations is broad enough to allow payment of start up costs from the larger, restricted appropriations.³ Additionally, there is ample excess authority in the larger annual restricted appropriations to cover start up costs. Big Sky Rx enrollment is significantly below estimates made during the 2005 session; consequently \$5.3 million of the \$6.0 million appropriation was reverted in FY 2006. Unless enrollment increases dramatically in the next two months, there will be sufficient authority in the FY 2007 appropriation to fund FY 2007 operating costs from the restricted appropriation.⁴

In summary, DPHHS could:

- 1) Record start up costs for Big Sky Rx against the restricted appropriations to implement SB 324
- 2) Use the entire \$1.0 million biennial appropriation for start up costs to pay a portion of general fund provider rate increases, in accordance with statute and thereby
- 3) Increase general fund reversions by \$1.0 million

LFC OPTION

The LFC could request that DPHHS:

- Pay all start up and implementation costs for Big Sky Rx from the \$6.0 million FY 2006 restricted appropriation and from the \$8.5 million FY 2007 restricted appropriations
- Use the full \$1.0 million biennial appropriation for Big Sky Rx to offset FY 2006 general fund Medicaid provider rate increases

² DPHHS reduced the Medicaid service and caseload cost estimate because it believed the additional claims paid in October and November 2005 from installation and use of an optical scanner artificially skewed Medicaid projections upwards.

³ The specific language restricting use of the appropriations is: “Funding in the prescription drug program is contingent on passage and approval of Senate Bill No. 324 and may be used only to implement Senate Bill No. 324.”

⁴DPHHS estimates FY 2007 Big Sky Rx costs at \$2.6 million, leaving an unexpended balance of \$5.4 million. If other programs authorized in SB 324 are implemented, that estimate would increase. Scott Sim, Office of Budget and Finance, Director’s Office, DPHHS, electronic communication, September 27, 2006

REVERTED GENERAL FUND

Fiscal year end closing is a very hectic process for DPHHS, and was especially so this year because of the variability in Medicaid cost estimates due to the purchase and implementation of an optical scanner to eliminate claims backlog. Medicaid projections are based on claims payment history and the projections became distorted because a higher volume and monetary amount of claims were paid in a shorter time compared to historic trends.

When DPHHS finalized all Medicaid accruals, about \$1.0 million in general fund remained in two Medicaid services appropriations. The excess balances were not discovered in time to process program transfers to offset cost over runs at the institutions, which would have reduced the appropriation transfer amount.

DPHHS May Use Biennial Appropriations to Offset FY 2007 Cost Overrun

DPHHS has alerted the LFC to a potential cost overrun in FY 2007 due primarily to:

- Continuation of FY 2006 cost overruns (\$5.6 million)
- A reduction in the federal Medicaid match rate (\$6.0 million)

It appears that DPHHS may face a general fund shortfall of nearly \$12.0 million in FY 2007⁵ without consideration of cost saving measures. DPHHS has provided a plan to reduce costs in compliance with statute. The agency notified the LFC that it will continue to reduce administrative costs, estimated to save \$1.0 million in FY 2007. It has also indicated that it will reduce provider rates effective April 1, 2007, unless the legislature opts to make other reductions or fund the shortfall.

Recently DPHHS staff⁶ indicated that the potential FY 2007 cost overrun could be reduced by another \$1.5 million. DPHHS has several unrestricted general fund biennial appropriations that paid \$1.5 million in FY 2006 expenditures. DPHHS could move the costs recorded against the biennial appropriations to reverted FY 2006 general fund appropriations. That action would free up the entire balance of the unrestricted biennial appropriations to be spent in FY 2007. The biennial appropriation authority above the amount needed to cover FY 2007 program costs would then be available to offset a portion of the FY 2007 cost overrun. DPHHS has indicated that it might implement this course of action if Medicaid costs do not exceed the accruals or if no other significant general fund bills come due.

MAINTAINING A BALANCE IN THE HEALTH AND MEDICAID INITIATIVES ACCOUNT

During the 2005 session, the legislature made several changes to the appropriations act to facilitate the accumulation of a \$25.0 million fund balance in the health and Medicaid initiatives account prior to drawing funds from the account. The legislature discussed the issues of initiating new health coverage and insurance programs, trying to ensure the solvency of the account, and sustainability of the programs in making these changes.

At the June LFC meeting, the committee heard a staff legal opinion that concluded that current statutes:

- Mandate the use of nongeneral fund first
- Allow transfer of appropriation authority, including augmentation of restricted appropriations
- Do not prohibit nongeneral fund account balances from being drawn down beyond legislative expectations

⁵ The Big Picture report by LFD staff includes a FY 2007 supplemental request of \$9.3 million, which includes use of biennial general fund balances to offset costs in FY 2007.

⁶ Scott Sim, personal conversation and various electronic communications with Lois Steinbeck, September 9 through September 13, 2006.

One of the conclusions from the legal analysis is that an account, like the health and Medicaid initiatives account, could be drained of all cash despite legislative actions to develop and maintain a cash reserve. The LFC requested that staff provide options for consideration regarding the health and Medicaid initiatives account. Options are limited to amendments to statute since actions taken in the appropriations act would not over ride statutory authority to manage appropriations.

Option 1: Amend 53-6-1201(4)(a)⁷ to prohibit draw down of the health and Medicaid initiatives account beyond legislative appropriation levels included in the general appropriations act

(4) (a) ~~Except for \$1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier. Appropriations made from this account may not be increased by transfers from other state special revenue accounts as allowed by 17-7-139.~~⁸

This option cleans up language that needs to be removed from statute and prohibits the account balance from being expended beyond legislative authorizations in the appropriations acts. It would maintain flexibility for the executive to move the appropriations made from the account among programs, or among agencies if the original purpose of the appropriation were maintained. It does prohibit augmentation of the appropriations to spend more cash from the account than anticipated by the legislature.

⁷ The entire statute governing the health and Medicaid initiatives account is shown in Attachment 1.

⁸ Legislative legal staff has reviewed and commented on the amendment.

ATTACHMENT 1

HEALTH AND MEDICAID INITIATIVES ACCOUNT STATUTE

53-6-1201. Special revenue fund -- health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

- (a) money from cigarette taxes deposited under 16-11-119(1)(c);
- (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and
- (c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) to fund new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) to provide a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) (a) Except for \$1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.

(b) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.